

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FREDERICK COOPER,	§
	§
Defendant Below-	§ No. 87, 2012
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 080129919
Plaintiff Below-	§
Appellee.	§

Submitted: June 22, 2012

Decided: July 30, 2012

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

ORDER

This 30th day of July 2012, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The defendant-appellant, Frederick Cooper, filed this appeal from the Superior Court's modified sentence for a violation of probation (VOP). The gist of Cooper's arguments is that he was denied due process, the VOP was not supported by competent evidence, and the Superior Court judge sentenced him with a closed mind. We find no merit to any of these claims. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that Cooper pled guilty on August 12, 2008 to one count of Aggravated Menacing. The Superior Court immediately sentenced him to

five years at Level V incarceration, to be suspended after serving one year in prison for eighteen months at Level III probation. In a separate case, Cooper also pled guilty in September 2008 to one count each of Burglary in the Second Degree and Assault in the Second Degree. For those charges, the Superior Court immediately sentenced him to a total period of seven years at Level V incarceration, to be suspended after serving one year in prison for two years at Level III probation (to be served consecutively to the probationary term of his August 2008 sentence).

(3) In February 2011, Cooper was indicted on multiple criminal charges including Burglary in the First Degree and Assault in the Second Degree. As a result of these new charges, he also was charged with violating his August 2008 and September 2008 probationary sentences. In June 2011, Cooper pled guilty to one count of Assault in the Second Degree. Cooper's plea agreement with the State also resolved the VOP charge associated with his September 2008 sentence, but did not resolve the VOP charge associated with his August 2008 sentence. The Superior Court immediately sentenced Cooper for Assault in the Second Degree to three years at Level V incarceration to be suspended immediately for probation. On the VOP adjudication, the Superior Court sentenced Cooper to a total period of six years at Level V incarceration, to be suspended after serving six months in prison for more probation.

(4) One month later, in July 2011, Cooper again appeared before the Superior Court for the VOP charge associated with his August 2008 sentence. Defense counsel requested a continuance of the hearing in order to determine if Cooper's June 2011 plea had resolved the pending VOP charge. Once the Superior Court determined that the earlier plea had not resolved the pending VOP charge, Cooper was informed that he could withdraw his earlier guilty plea and was ordered to inform the Superior Court of his intention within ten days. Although Cooper filed a letter requesting more time to respond, he never filed a motion seeking to withdraw his guilty plea or filed any objection to scheduling a hearing on the pending VOP.

(5) Accordingly, on October 28, 2011, the Superior Court held a hearing on the remaining VOP charge. Cooper appeared with counsel and requested the Superior Court to sentence him to mental health and substance abuse treatment. The Superior Court found Cooper in violation of his probation and sentenced him to four years at Level V incarceration. The Superior Court ordered an evaluation by the Treatment Access Center (TASC) and retained jurisdiction to modify the sentence once it received the TASC evaluation. In January 2012, the Superior Court issued a modified sentencing order, which sentenced Cooper to four years at Level V incarceration, to be suspended upon Cooper's successful completion of the Key Program for the balance to be served at the Level IV Crest Program, to be

suspended upon Cooper's successful completion of Level IV Crest for the balance to be served at Level III Crest Aftercare. It is from this order that Cooper now appeals.

(6) In his opening brief on appeal, Cooper argues that his VOP charge was supposed to have been resolved in July 2011 with his other charges and that he was brought before the Superior Court again in October 2011 without proper notice. He also argues that the October 2011 VOP hearing did not comport with the minimum requirements of due process and that there was no competent evidence to support the Superior Court's finding that he violated probation. Finally, Cooper contends that the Superior Court abused its discretion in sentencing him to more than Level III treatment.

(7) We find no merit to any of Cooper's contentions. The record reflects that Cooper was notified that he was being charged with a VOP as a result of new criminal charges. After Cooper had pled guilty to those charges, the Superior Court had sufficient competent evidence to find that Cooper had violated his probation.¹ Accordingly, we find no due process violation. Moreover, the Superior Court gave Cooper the opportunity to withdraw his June 2011 guilty plea because that plea mistakenly had not resolved all of Cooper's pending charges. Cooper did not move to withdraw his plea, and he raised no objection to

¹ See *Collins v. State*, 897 A.2d 159, 160-61 (Del. 2006) (holding that a VOP need only be proven by "some competent evidence" and that a defendant's admission was sufficient competent evidence).

proceeding with the October 2011 VOP hearing. Having failed to object below, despite being given the specific opportunity to do so, we find that Cooper has waived any claim that his June 2011 guilty plea should have resolved all of his pending VOP charges.²

(8) Cooper's final claim is that the Superior Court sentenced him with a closed mind. A judge sentences a defendant with a closed mind when the sentence is based upon a preconceived bias rather than consideration of the nature of the offense and the character of the defendant.³ In this case, the record reflects that the Superior Court listened to both parties' arguments about the appropriate sentence in Cooper's case. The judge then ordered a TASC evaluation to further aid the judge in formulating an appropriate sentence and modified his sentence accordingly. Under these circumstances, we find nothing in the record to support Cooper's contention that the judge sentenced him with a closed mind.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

² *Warner v. State*, 2001 WL 1512985 (Del. Nov. 21, 2001).

³ *Weston v. State*, 832 A.2d 742, 746 (Del. 2003).